



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-S-

DATE: MAY 11, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a mental health therapist and registered nurse, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief and contends that she is eligible for a national interest waiver under the *Dhanasar* framework. In addition, she contends that the Director imposed an overly high standard of proof. With respect to the standard of proof in this matter, a petitioner must establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what she claims is "more likely than not" or "probably" true. To determine whether a petitioner has met her burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an

individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the

¹ In announcing this framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (NYSDOT).

proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree, and the record supports that finding.³ In addition, the regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, “[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate.” The denial decision stated that “since the petitioner did not submit this required evidence, USCIS must deny the Form I-140.” With the appeal, however, the Petitioner offers a properly signed and fully executed Form ETA-750B. Therefore, the Director’s finding on this issue is withdrawn. The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working as a mental health therapist and registered nurse with [REDACTED] providing therapy “to clients with substance dependency, severe trauma, and co-occurring psychiatric diagnosis.” In addition, she was employed as a “professional clinical counselor intern” for [REDACTED] working with patients with liver disease, addiction, and substance dependency issues.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicates that she seeks to conduct research focusing on how psychological therapies can assist patients’ compliance in taking hepatitis C medication. She also intends to investigate whether a time-limited and solution-focused therapy model can improve patient outcomes for newly

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner received a master of science degree in therapeutic counseling from the University of [REDACTED] in [REDACTED] in November 2013. The record includes an academic credentials evaluation indicating that this degree is the equivalent of a master of science degree from an accredited U.S. college or university. See 8 C.F.R. § 204.5(k)(3)(i)(A).

diagnosed liver patients. In addition, the Petitioner states that she will provide clinical services as a therapist and consulting registered nurse, develop a training program for liver nurses, and offer a biweekly support group for liver disease patients in [REDACTED]. The record includes various articles about alcohol abuse and alcohol-related liver disease in the United States. These articles highlight the aforementioned public health problems and demonstrate the value of providing effective treatments and counseling to substance abuse patients. The Petitioner also submits letters of support from medical professionals discussing the public health benefits associated with improving therapies for liver disease and hepatitis patients. We find that the Petitioner's proposed work as a researcher, therapist, nurse, and health care educator has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of her proposed work. Her evidence includes letters of support from colleagues discussing the potential benefits of her research in the psychotherapy field and healthcare industry. For instance, [REDACTED] a licensed psychotherapist and director of the [REDACTED]

[REDACTED] asserts that the Petitioner's "research in therapy to treat depression and anxiety in liver/hepatitis patients . . . has the potential to help a large number of patients who currently have few viable treatment options." In addition, the Petitioner submits documentation indicating that the benefit of her proposed research has broader implications, as the results are disseminated to others in the field through psychology journals. To the extent that the Petitioner proposes to perform research on psychological therapies for liver patients, we find that she meets the first prong of the *Dhanasar* framework.⁴

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner's qualifications. The Petitioner submitted documentation of her published articles, licenses, training certifications, a promotional flyer for her patient support group, and a webpage identifying her as a board member of the [REDACTED] charity. She also offered reference letters discussing her medical training, clinical work, and research projects.⁵

The Petitioner maintains that her clinical expertise both as a psychotherapist and as a nurse specializing in treating liver disease, and her medical training program development work render her well positioned to advance her endeavor. Because the Petitioner's proposed clinical duties and nurse training development work do not meet the first prong of the *Dhanasar* framework, our analysis

⁴ With respect to the Petitioner's proposed counseling and treatment of patients and training program for liver nurses, while these endeavors have substantial merit, we agree with the Director that the record does not establish that her clinical and educational work would impact her field and the healthcare industry more broadly, as opposed to being limited to the patients she serves and her nurse trainees. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner's clinical duties as a therapist and nurse, and training program development work do not by themselves meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

⁵ We discuss only a sampling of these letters, but have reviewed and considered each one.

under this prong will focus on whether she is well positioned to advance her proposed research. Here, the Petitioner has not demonstrated a record of success or progress in her field, or a degree of interest in her work from relevant parties, that rise to the level of rendering her well positioned to advance her proposed endeavor.

The Petitioner asserts that her published research on psychotherapy for liver patients demonstrates that she is well positioned to advance her endeavor. In letters supporting the petition, several medical professionals discussed the Petitioner's research aimed at improving the care and treatment of patients suffering from liver disease. For example, [REDACTED] a consultant physician at [REDACTED] and [REDACTED] states that the Petitioner's "research on the benefits of group therapy on depression and anxiety levels of liver and hepatitis patients will very shortly be published in a major peer reviewed journal." The record includes a research article she authored in [REDACTED] but does not document what, if any, influence or interest it generated. Further, we note that the article was not published until July 2016 and therefore does not establish her eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12).⁶

[REDACTED] a consultant psychiatrist and medical director for [REDACTED] indicates that he "asked [the Petitioner] to assist me drafting a formal clinical and research proposal for establishing a [REDACTED] extension branch at [REDACTED] [REDACTED] further notes that although the Petitioner "possessed the personal experience and knowledge of the Clinic as well as the necessary clinical expertise," "the realities of the business and financial issues prevented our proposal from ever going through, and the project was shelved for a later date." In addition, [REDACTED] a professor and director at the [REDACTED] in [REDACTED] states that the Petitioner "coordinated a research project for the Institute," but does not discuss this project's findings or the implications of her research. Finally, while [REDACTED] asserts that the Petitioner's "work can be put to use by countless therapy practicing institutions throughout the country," the record does not show that her research findings have had such an effect.

The record demonstrates that the Petitioner has conducted and published research during her career. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his or her proposed research. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner has not shown that her research has been frequently cited by other medical professionals or otherwise served as an impetus for progress in the field, that it has affected clinical practice, or that it has generated substantial positive discourse in the broader medical community.

⁶ The Petitioner also submits an article she wrote for [REDACTED] magazine entitled [REDACTED] but this article reports results from other investigators' studies and does not present findings from her own research projects.

Nor does the evidence otherwise demonstrate that her work constitutes a record of success or progress in her area of research.

As the record is insufficient to demonstrate that the Petitioner is well positioned to advance her proposed endeavor, she has not established that she satisfies the second prong of the *Dhanasar* framework. Accordingly, we affirm the Director's determination on this issue.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that she is eligible for a waiver due to her research and clinical skills and accomplishments, and because “[t]he United States health care industry is currently struggling to fill positions of need” based on “high demand and not enough United States workers to fill such positions.”⁷ However, as the Petitioner has not established that she is well positioned to advance her proposed endeavor as required by the second prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she has not established eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of J-S-*, ID# 1156595 (AAO May 11, 2018)

⁷ We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States.